

## **Inquiry into the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration**

**ActionAid Submission to the Joint Standing Committee on Treaties**

**6 September 2019**

### **Introduction**

ActionAid Australia welcomes the opportunity to make a submission to the inquiry into the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration.

ActionAid Australia supports women living in poverty to stand up and claim their human rights by collectively confronting the injustices they face. In more than 45 countries, ActionAid supports women to understand their rights, reflect on the people and systems that affect them, and harness their power to act with others to change their lives and positions in society. This work includes supporting women in low income countries to secure their rights at work, access gender-responsive public services and sustain their livelihoods through influencing relevant government policies and services.

ActionAid Australia understands the purpose of the proposed UN Convention is to strengthen provisions on transparency in the treaty-based investor-state disputes to take account of the public interest in such arbitrations.

ActionAid Australia recognises that Investor State Dispute Settlement (ISDS) mechanisms have the potential to disincentivise governments from introducing domestic regulations that support women's rights such as efforts to improve access to decent work, equal pay and fair working conditions, as well as gender-responsive public services. While increased transparency of this mechanism is a critically important step towards addressing some concerns relating to its application, ActionAid maintains a strong opposition to the inclusion of ISDS by the Australian Government in any existing or future trade and investment agreements.

ActionAid Australia supports and reiterates the recommendations of the Australian Free Trade and Investment Network (AFTINET) submission to this inquiry as a member of the Network.

## **Summary of recommendations**

ActionAid joins with AFTINET in recommending that:

- 1. Given the significant risk that ISDS poses to human rights, environmental sustainability and regulatory sovereignty, the Australian government should commit to:**
  - a. exclude ISDS provisions from all Australian trade and investment agreements;**
  - b. renegotiate existing trade and investment agreements that include ISDS provisions and remove such provisions from the agreements.**
  
- 2. Where trade and investment agreements do include ISDS provisions ActionAid strongly supports these being, at a minimum, subject to the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. Therefore, the Australian government is urged to:**
  - a. ratify the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration;**
  - b. address inconsistencies in the application of the Rules on Transparency in existing agreements to ensure they conform to the UNCITRAL rules.**

ActionAid Australia appreciates the opportunity to contribute to this inquiry and urges the Joint Standing Committee on Treaties to consider these recommendations

### **Submitted by:**

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